

Sentencing Hearing

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

File No. 11-20574

JEFFREY SCHUETT,
Defendant.

_____ /

SENTENCING

BEFORE THE HONORABLE THOMAS L. LUDINGTON

United States District Judge

United States Post Office Building

1000 Washington Avenue

Bay City, Michigan 48708

Monday, December 17, 2012

Sentencing Hearing

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APPEARANCES:

For the Plaintiff: LIBBY KELLY DILL (P71276)
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For the Defendant: JUDITH S. GRACEY (P39766)
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ALSO PRESENT: Marvin Burns
Probation Officer

To Obtain a Certified Transcript:

PEG L. GOODRICH, CSR-0258, RMR
Federal Official Court Reporter
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Sentencing Hearing

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T A B L E O F C O N T E N T S

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STATEMENTS BY THE COURT:

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ALLOCUTION:

By Ms. Gracey
By the Defendant

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STATEMENT BY THE GOVERNMENT:

By Ms. Dill

12

SENTENCING BY THE COURT:

17

CERTIFICATE OF COURT REPORTER:

21

EXHIBITS:IDENTIFIED RECEIVED

None marked.

Sentencing Hearing

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1 Bay City, Michigan

2 Monday, December 17, 2012

3 3:44 p.m.

4 (Court, counsel and defendant present)

5 THE CLERK: Calling the case of the United States of
6 America versus Jeffrey Schuett, Case No. 11-20574.

7 THE COURT: Good afternoon. If we could have counsels'
8 introductions, please.

9 MS. DILL: Good afternoon, your Honor. Libby Dill on
10 behalf of the government.

11 MS. GRACEY: Your Honor, for the record, Judith Gracey
12 on behalf of Mr. Schuett who stands to my left.

13 THE COURT: Good afternoon Miss Gracey and good
14 afternoon, Mr. Schuett. We are present for Mr. Schuett's
15 sentencing hearing.

16 The Court's records reflect the fact that Mr. Schuett
17 entered a guilty plea before Judge Binder on September the 6th of
18 this year. We accepted the guilty plea on report and
19 recommendation on September the 22nd.

20 The gentleman entered his plea to the offense of felon
21 in possession of a firearm. It's a Class A felony under federal
22 law, punishable under the circumstances by a term of not fewer
23 than 15 years in custody and up to lifetime custody. The Court
24 is authorized to impose a term of up to five years of supervised
25 release following the term of custody and also to impose a fine

1 of up to \$250,000 at the time of sentencing.

2 After the gentleman entered his plea, he was interviewed
3 by Probation Officer Burns who is present. Good afternoon, sir.
4 The pre-sentence investigation report was circulated back in
5 October.

6 Miss Gracey, have you had a chance to review the report
7 and review it with Mr. Schuett?

8 MS. GRACEY: I have, your Honor.

9 THE COURT: Any additions or corrections that have not
10 received previous attention with Mr. Burns?

11 MS. GRACEY: No additional corrections or deletions that
12 have not already received --

13 THE COURT: The report contained an advisory guideline
14 calculation that corresponded with the Rule 11. It reflected a
15 base offense level as a result of the fact that the gentleman
16 scored as an armed career criminal. He was accorded the
17 three-level reduction for his acceptance of responsibility. He
18 was also, as a result of the determination that he was a
19 qualifying armed career offender, placed in Category VI.

20 The guideline recommendation of 168 months to 210 months
21 is elevated on the minimum term to 180 as a result of the
22 statutory minimum.

23 Any challenges to the scoring, Miss Gracey?

24 MS. GRACEY: No, judge.

25 THE COURT: Miss Dill, any additions or corrections to

1 the report, any challenges to the scoring, ma'am?

2 MS. DILL: No, your Honor.

3 THE COURT: Ms. Gracey, we will entertain allocution.

4 MS. GRACEY: Thank you, your Honor.

5 Judge, I would rely heavily on my -- on defendant's
6 sentencing memorandum that was filed with the Court on -- last
7 week. Specifically, your Honor, as the Court knows and has
8 already indicated on the record and as far as the advisory
9 guidelines, there was no challenge to that.

10 I would respectfully ask the Court to consider as it
11 relates to sentencing Mr. Schuett, to give him credit for the
12 time subsequent from the time that he was arraigned on the
13 charges and detained by the -- by the government. He was serving
14 a sentence for a probation violation on the state level.
15 However --

16 THE COURT: You indicated probation in your memorandum.
17 Was the gentleman not on parole?

18 MS. GRACEY: I misspoke and I -- I misstated that and
19 I'm glad that the Court corrected that on the record. It was for
20 a parole violation and he is serving a sentence as it relates to
21 that. And I apologize that it was an inadvertent error and I
22 again stated that on the record but clearly, he was on parole and
23 is serving a parole violation on the state level.

24 With that being said, judge, I would respectfully ask
25 the Court to give at the bare minimum at sentencing for today,

1 credit at the time on October 14, 2011, as the date that there
2 was a detention hearing held and my client consented to
3 detention, despite the fact that he was in state custody as
4 well.

5 The reason that he consented and then decided to stay
6 within the state facility was merely for convenience, not taking
7 anything away from consenting to detention. So it is defendant's
8 position that he should in fact receive the credit from the time
9 that he was detained or held by consent for detention on October
10 14th of 2011.

11 I think it is discretionary with the Court as it relates
12 to giving him that credit at that time, your Honor, versus
13 giving -- having the sentence start at today's date which would
14 be the sentencing date. And I would respectfully ask the Court
15 to do that.

16 We have a situation where although, again, the
17 guidelines are advisory, a mandatory sentence here that quite
18 frankly, I think -- and the Court sat through the suppression
19 hearing and heard testimony -- Mr. Schuett has always admitted
20 his responsibility and his guilt to his actions, albeit
21 mitigating factors, not excusing the fact that he was ineligible
22 to carry a gun at that time. But because of where he was living
23 and the high crime area that he was forced to live in for
24 economic reasons, et cetera, he did have a gun. He took
25 responsibility for that.

1 However, I don't think, given the fact that he was then
2 subsequently arrested and the Court heard testimony from the
3 agents that were basically in the area, just looking to stop
4 people, and Mr. Schuett, the testimony was that he crossed the
5 street or jaywalked and committed a civil infraction and that
6 allowed them to frisk him and to then later find the gun that Mr.
7 Schuett had.

8 I'm not by way of excusing his behavior, judge, and
9 clearly, he was ineligible to carry a gun, having been a felon,
10 but I would state to the Court that I don't think that those --
11 that the legislature had a person as -- such as Mr. Schuett in
12 mind in imposing the mandatory 15 years. And I would
13 respectfully ask the Court to temper that with some type of mercy
14 in fashioning a sentence.

15 And also, that the Court would give him credit for the
16 time once he was detained on the October 14th, 2011 date.

17 THE COURT: Thank you.

18 Mr. Schuett, any remarks that you would add to those
19 fine remarks that have been made by your attorney on your behalf.

20 THE DEFENDANT: Yes, I do, your Honor. I have something
21 I have written out that I would like to read to the Court if I
22 can.

23 THE COURT: Sure.

24 THE DEFENDANT: Your Honor, I'm aware the Court must
25 impose the 15-year mandatory minimum sentence for me for the

1 crime I committed.

2 In my case, I believe this to be an injustice since in
3 my eyes and many others, the punishment does not fit the crime.
4 I'm also aware of Congress' intention with the Armed Career
5 Criminal Act when they say this law is tailored to a particular
6 type of offender who possesses a gun but I'm confused on how they
7 are able to punish me for crimes they believe I might possibly
8 commit.

9 I say that I am not -- I am not a career criminal.
10 Since my release from prison, I've successfully held numerous
11 jobs and attempted to support me and my children as best as I
12 could. From the time I possessed the handgun to the time the
13 officers found it my possession, not one second of that time did
14 I have any type of malicious intention -- any type of malicious
15 intention with that firearm whatsoever.

16 I was living in a tougher neighborhood for various
17 social and economical reasons and was witness to several
18 incidents that made me very fearful. That was my one and only
19 sole purpose of possessing the handgun. And to say because I've
20 made several stupid mistakes as a younger man, that now because I
21 possess a firearm and I will be committing crime with said gun,
22 is not proven beyond a reasonable doubt.

23 I admit I was wrong for possessing the gun and I wish I
24 could change it so I could see my kids grow up but I will accept
25 responsibility, better my life and to try to change the law

1 through Congress and give the judges the discretion back that
2 this mandatory minimum has taken.

3 Thank you, your Honor.

4 THE COURT: Thank you. This was a .22 caliber
5 semi-automatic pistol. How did you happen to choose that
6 weapon?

7 THE DEFENDANT: I chose the weapon, your Honor, because
8 it was a smaller caliber handgun and if -- if I did end up having
9 to use the gun, then, the bullets would stop by hitting
10 something, you know, that -- that was my justification for having
11 that -- that caliber of gun, you know.

12 THE COURT: How long did you have it?

13 THE DEFENDANT: About two months.

14 THE COURT: Did you acquire it on the street?

15 THE DEFENDANT: Yes.

16 THE COURT: Was there a particular reason that you
17 thought you should have it on July 19th, 2011?

18 THE DEFENDANT: Me and the mother of my -- my -- my
19 daughter's brothers were watching the fireworks in Saginaw. We
20 went to a party after the fireworks were shown and one of the
21 guys there decided to shoot his gun off in the air. There was
22 another group of individuals down the street. They thought we
23 were shooting at them and so they started shooting back at us and
24 they knew me and they knew where I lived, your Honor, so they
25 ended up a couple two, three days later, shooting my house up.

1 And that happened on two different events and one event, my
2 daughter was in the house with me.

3 And so I just decided to, when I go to the store to buy
4 a pack of cigarettes, that I would carry this gun with me because
5 I figured they were trying to kill me.

6 THE COURT: The pre-sentence report reflected the fact
7 that you had had employment in numerous locations since you
8 paroled but they were awaiting verification. I asked your
9 probation officer today whether he had obtained any of the
10 verification. They had not responded.

11 What type of work were you doing?

12 THE DEFENDANT: Well, when I got out of prison, while I
13 was in prison, I received my master of mechanics license through
14 the state certification system, through the Secretary of State.
15 I got out and I had a -- found a job in a place that installs
16 wheelchair lifts into vans, called clock conversions out of Grand
17 Rapids. I worked there for 18 months.

18 After that, in Saginaw, I was working at a Beau Jacks on
19 Highway M-13 for three or four months. Then I worked at the
20 Muffler Man in Frankenmuth for a couple months. And then at the
21 time I was arrested, I was in the process of getting a job for
22 the Northwest Tire Company out in Shields.

23 THE COURT: I appreciate your remarks. I appreciate the
24 information.

25 The government?

1 MS. DILL: Your Honor, regarding the statements alleged
2 in the defendant's sentencing memorandum, defendant pleaded
3 guilty to an unarmed robbery in state court on December 3rd of
4 2001. He was on parole for that offense when law enforcement
5 picked him up for this offense when he had a firearm on his
6 person. He was subsequently charged here.

7 Defendant is subject to that statutory mandatory minimum
8 penalty of 15 years pursuant to Section 924(e). The mandatory
9 minimum penalty must be imposed because defendant neither
10 provided substantial assistance nor is he safety valve eligible.
11 The Sentencing Commission recommends imposition of a sentence for
12 the instant offense to run consecutively to the sentence imposed
13 for the revocation according to the sentencing guidelines,
14 Section 5G1.3(c), Application Note 3(C).

15 The defendant cited several cases in the memorandum from
16 the Seventh Circuit, both *Ross* and *Cruz*. I believe this case can
17 be differentiated from those cases because there was a same
18 course of conduct.

19 In both of those cases, defendant was charged with a
20 firearms violation in Federal Court while the State Court handled
21 the home invasion equivalent charge. So they were actually part
22 of the same transaction or occurrence, where here, we have two
23 separate crimes. We have an unarmed robbery in 2001 and then
24 subsequent federal conviction in 2011.

25 Defendant has an extensive criminal history here which

1 is why he is being charged with 924(e). Those include serious
2 violent crimes and a consistent pattern of probation/parole
3 violations. I do not believe the 3553(a) factors warrant a
4 variance and request this Court sentence defendant pursuant to
5 the Rule 11 Agreement.

6 In 1999, defendant was convicted for possession of
7 marijuana.

8 In 2000, he was convicted for fleeing a police officer
9 in the third degree. The police reports for this conviction
10 indicated that while he was fleeing, he was in a school zone.
11 There are approximately 50 to 60 children in that area. With
12 that crime, he failed to complete his terms of probation. He was
13 not able to complete inpatient treatment for substance abuse.
14 And then he absconded from probation.

15 In 2000, he was convicted of assault with intent to do
16 great bodily harm less than murder -- or his -- I'm sorry,
17 serious bodily harm less than murder which was pled down to
18 assault with intent to murder. The victim in this particular
19 crime was his mother. Defendant put a knife up to her and cut
20 her on her arm. He had assaulted her both in the car and when
21 they got back home that day. He failed to complete his term of
22 probation on that charge as well.

23 In 2001, the defendant pled guilty to unarmed robbery.
24 It was originally charged as an armed robbery. Sheriff's
25 Department responded to a call for an armed robbery. Defendant

1 and another individual had attacked the victim by luring him into
2 a location but with a female. The victim suffered multiple
3 lacerations, contusions and bruising to the face and the hands of
4 the defendant show he used his fists and a bottle to assault the
5 victim and he also took his wallet.

6 After that, he had a series of misdemeanor violations
7 and a failure to appear.

8 Your Honor, I believe those crimes are serious, they are
9 violent and show a consistent pattern of the defendant and I
10 believe the Rule 11 Agreement accurately reflects a proper
11 punishment in this case.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Schuett, I have just a couple more questions. And
15 that, I guess, would be related to your parents. Despite some
16 pretty rocky experiences, they apparently are -- remain
17 emotionally supportive.

18 THE DEFENDANT: Yes, your Honor. Yes, they do.

19 THE COURT: Why should they do that?

20 THE DEFENDANT: Why should they do that, your Honor?
21 They -- they don't have to but they feel that they are my parents
22 and they love me so --

23 THE COURT: You're 31 years old.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You've got an extensive criminal history,

1 recognizing you've also got a felony background. And you're
2 carrying a weapon. I don't understand the judgment. Can you
3 help me get a little better understanding for what would suggest
4 to you that you were safer with a weapon than you were
5 potentially ending up facing a long prison commitment for
6 maintaining possession of that weapon? I'm trying to understand
7 your judgment.

8 THE DEFENDANT: Well, your Honor, another instance that
9 happened when I went into one of the convenience stores there in
10 the city, you know, I go up and pay for things, people would see
11 me. You know, I did keep jobs, I can fix cars so I had money.
12 They seen me with money.

13 A couple times, you know, people were making comments to
14 me like, I'll take your money and, you know, I felt overwhelmed
15 by the fact there were at least three or four of them and only
16 one of me and things like that. And you know, I would hear
17 gunshots in my neighborhood at least twice a week, I'd hear some
18 gunshots being fired. So -- and with them shooting my house up,
19 I figured that if I'm walking down the street and they drive up
20 on me in a car and they start shooting at me and I do not shoot
21 back at them, they will just walk up to me and kill me right
22 there.

23 I mean, like I said, your Honor, I was a victim of
24 circumstances and the situation I was around people that they
25 thought that they were in a gun battle with each other and I was

1 involved in it because I was just standing there.

2 THE COURT: And I appreciate that. But to be measured
3 against that, you knew that there were very substantial penalties
4 that were associated with possessing that weapon, correct?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And decided to carry it anyway.

7 THE DEFENDANT: I was not aware that there was the Armed
8 Career Criminal Act and the mandatory 15-year sentence.

9 THE COURT: Sure. And I'm sure that part probably took
10 a fair amount of discussion with your attorney. It is an
11 extensive period of time. But respectfully, I was trying to
12 measure that against your earlier comments.

13 There are at least in my view, some positive aspects
14 about you and your life that come through the pre-sentence
15 report. You have the intellectual capability to do better than
16 you have. You have made the effort even to at least commence
17 community college participation. You have held down some regular
18 employment that reflects your -- at least your ability to satisfy
19 an employer for a period of time.

20 On the other hand, your -- your behavior has been
21 impulsive, short-sighted, and on occasions, violent. And it's
22 those pieces that I'm trying to put into perspective. And I hope
23 you are trying to put it into perspective.

24 Most of these activities have taken place during a
25 period of time when you were a young man. And you're aware of

1 the fact that you're going to be a bit more mature when you leave
2 custody at this point and my sincere hope and belief is that you
3 turn a corner and that you are able to place, particularly the
4 care and concern that you have and have expressed for your
5 daughters first and primary in your life.

6 As we've talked and as counsel have covered, it's the
7 extensive criminal history that in many respects drives the
8 sentence today, together with the gravity of the particular
9 offense involved.

10 Pursuant to the Sentencing Reform Act and giving
11 separate consideration to the 3553(a) factors which we've
12 identified here in concluding, we hereby commit the gentleman to
13 the custody of the United States Bureau of Prisons for a term of
14 180 months. The term is to run concurrent with the gentleman's
15 parole sentence with the State Department of Corrections.

16 Upon the gentleman's release from custody, he is to be
17 placed on supervised release for a term of three years. He is to
18 pay the special assessment of \$100 which is due presently if it's
19 not been previously paid.

20 We will waive the imposition of a fine, costs of
21 incarceration and costs of supervision. He does not have the
22 financial resources to reimburse the government for those
23 expenses.

24 Drug testing is ordered.

25 While he is on supervision, he is to respect the

1 standard conditions of supervised release that have been
2 established by the United States District Court for the Eastern
3 District of Michigan.

4 He is also to comply with the following special
5 conditions:

6 He is to participate in a program approved by the
7 Probation Department for anger management if his probation
8 officer considers it necessary.

9 He is to participate in a program approved by the
10 Probation Department for mental health counseling if his
11 probation officer considers that necessary.

12 He is to take all medications prescribed by his
13 physician, including a psychiatrist, in the dosages and at the
14 times that are proposed by the doctor. If he is prescribed a
15 medication, he is to take it. He is not to discontinue any
16 medications against medical advice.

17 He is also to establish a plan for the Montcalm County
18 Friend of the Court to satisfy the child support arrearage with
19 that agency. He is to abide by that plan until the arrearage is
20 paid.

21 Miss Gracey, any questions concerning the terms of the
22 sentence or objections that you've not had a previous opportunity
23 to make?

24 MS. GRACEY: No objections, your Honor. Just for
25 clarification, the Court said it would -- the sentence would run

1 concurrent with parole commencing when, sir?

2 THE COURT: It would run from the determination by the
3 parole board, I believe. It would not commence with the -- well,
4 the interesting point is that we have to first figure it out
5 under state law and it would probably be with his physical
6 detention.

7 MS. GRACEY: Okay.

8 THE COURT: Now, by contrast to state sentencing where
9 we would determine the effective date of that, and the credit, in
10 Federal Court, we determine the sentence -- make the
11 determination as to whether the sentence is to be imposed
12 concurrently or consecutively and then the Bureau of Prisons will
13 actually do the calculation as soon as the gentleman is in their
14 custody.

15 We have done what we can, by that I mean the Court, both
16 to make a determination with respect to the concurrent nature of
17 the sentence. Indeed, that's part of the Rule 11 Agreement in
18 the case.

19 MS. GRACEY: Okay. Thank you.

20 THE COURT: I believe that the effective date for
21 purposes of a determination of his federal sentence will be the
22 date that he was placed in custody by the Department of
23 Corrections for the parole violation.

24 MS. GRACEY: Thank you.

25 THE COURT: Thank you. Any other questions or

1 objections?

2 MS. GRACEY: No.

3 THE COURT: From the government?

4 MS. DILL: No, your Honor.

5 THE COURT: Mr. Schuett, one concluding matter. Part of
6 the Rule 11 Agreement in this case, I believe -- I will double
7 check -- included an appeal waiver. Yes. It's in Paragraph 7.
8 It provides as follows:

9 If the sentence imposed does not exceed the maximum
10 amount allowed by Part 3 of the agreement, then defendant will
11 waive the right to appeal his conviction or sentence on any
12 grounds.

13 You can review that with Miss Gracey. What's important,
14 however, is that if you think there is any issue that would have
15 escaped that waiver, that you thought was reviewable by the Court
16 of Appeals, it would still be necessary for you to meet the
17 deadline of filing a Claim of Appeal within 14 days of today's
18 date in order to begin that process.

19 Do you understand that, sir?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Miss Gracey, any additional business?

22 MS. GRACEY: No.

23 THE COURT: Miss Dill?

24 MS. DILL: No, your Honor.

25 THE COURT: Mr. Schuett, good luck, sir. Thank you.

Sentencing Hearing

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1 THE DEFENDANT: Thank you. Thank you, your Honor.

2 MS. GRACEY: Thank you, judge.

3 (At 4:14 p.m. - proceedings adjourned)

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6 *CERTIFICATE OF COURT REPORTER*

7

8

9 I, PEG L. GOODRICH, Official Court Reporter in
10 and for the United States District Court, Eastern District
11 of Michigan, appointed pursuant to the provisions of Title
12 28, United States Code, Section 753, do hereby certify that
13 the foregoing proceedings held before the HONORABLE
14 THOMAS L. LUDINGTON, District Court Judge, is a true and
15 correct transcript of my stenotype notes in the matter of
16 UNITED STATES OF AMERICA v JEFFREY SCHUETT, File No.
17 11-20574, held on Monday, December 17, 2012.

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20

21 s/Peg L. Goodrich
22 Peg L. Goodrich, CSR, RPR, RMR
23 Federal Official Court Reporter
24 United States District Court
Eastern District of Michigan

25

Date: July 17, 2013
Bay City, Michigan